

SENATE BILL No. 379

DIGEST OF INTRODUCED BILL

Citations Affected: IC 28-1-12-8; IC 28-6.1-6-26; IC 30-4-3-7.

Synopsis: Purchase by fiduciary. Permits a bank, trust company, or savings bank that holds funds or property as a fiduciary to use the funds or property to purchase products, services, and securities from the bank, trust company, savings bank, affiliate, or a selling group or syndicate that includes the bank, trust company, savings bank, or affiliate.

Effective: July 1, 2007.

Young R Michael

January 11, 2007, read first time and referred to Committee on Insurance and Financial Institutions.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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SENATE BILL No. 379

A BILL FOR AN ACT to amend the Indiana Code concerning trusts and fiduciaries.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 28-1-12-8 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2007]: **Sec. 8. (a) Unless otherwise provided in an agreement or**
4 **a trust, a bank or trust company that holds funds or property as a**
5 **fiduciary may use the funds or property to purchase from the**
6 **bank, the trust company, or an affiliate of the bank or trust**
7 **company, a product, service, or security, including an insurance**
8 **product or security that is underwritten by the bank, the trust**
9 **company, an affiliate of the bank or trust company, or a syndicate**
10 **or selling group that includes the bank, the trust company, or an**
11 **affiliate of the bank or trust company if the:**
12 **(1) purchase price and any ongoing charges and costs are fair,**
13 **reasonable, and substantially equivalent to the cost of similar**
14 **products and services; and**
15 **(2) purchase complies with IC 30-4-3.5.**
16 **The compensation for the product, services, or security received by**
17 **the bank, trust company, an affiliate of the bank or trust company,**

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or a syndicate or selling group that includes the bank, the trust company, or an affiliate of the bank or trust company may be in addition to the compensation that the bank or trust company is otherwise entitled to from the fiduciary account.

(b) A bank or trust company that makes a purchase or sale described in subsection (a) shall disclose, at least annually, to each person entitled to receive statements of account activity from the bank or trust company any purchase or sale made by the bank or trust company during the year. The disclosure must be in writing or an electronic format and include the following:

(1) Any capacity in which the bank, the trust company, or an affiliate of the bank or trust company acts for:

(A) the issuer of the securities; or

(B) the provider of the products or services;

that is the subject of the purchase or sale.

(2) A statement that the bank, the trust company, or an affiliate of the bank or trust company has an interest in the subject of the purchase or sale, if applicable.

(3) The rate and method by which that compensation was determined.

(4) The name, telephone number, street address, and mailing address of an officer of the bank or trust company who may be contacted for further information.

(5) A notice that the bank's or trust company's ability to make transactions described in subsection (a) ends upon receipt at any time of a notice of objection by a majority of the persons entitled to receive statements of account activity.

(c) To make a purchase or sale under subsection (a):

(1) if the fiduciary relationship is a revocable trust, the grantor must have consented to the purchase or sale in writing;

(2) if the fiduciary relationship is an agency, the principal must have consented to the purchase or sale in writing; or

(3) if the fiduciary relationship is an irrevocable trust (or if the trust grantor is deceased or reasonably believed by the trustee to be incapacitated), after providing at least forty-five (45) days advance notice to any person entitled to receive statements of account activity from the bank or trust company, the bank or trust company may make a purchase or sale described in subsection (a), except that, in the case of an irrevocable trust, a bank's or trust company's authority to make the purchases or sales ends upon receipt at any time

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from a majority of the persons entitled to receive statements of account activity from the bank or trust company of written objection to the application of this section to the fiduciary account. An objection is considered to be effective on the date the objection is received at the mailing address listed in the disclosure required by subsection (b).

SECTION 2. IC 28-6.1-6-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 26. (a) Unless otherwise provided in an agreement or a trust, a savings bank that holds funds or property as a fiduciary may use the funds or property to purchase from the savings bank or an affiliate of the savings bank a product, service, or security, including an insurance product or security that is underwritten by the savings bank, an affiliate of the savings bank, or a syndicate or selling group that includes the savings bank or an affiliate of the savings bank, if:

- (1) the purchase price and any ongoing charges and costs are fair, reasonable, and substantially equivalent to the cost of similar products and services; and
- (2) the purchase complies with IC 30-4-3.5.

The compensation for the product, service, or security received by the savings bank or an affiliate of the savings bank or a syndicate or selling group that includes the savings bank, or an affiliate of the savings bank may be in addition to the compensation that the savings bank is otherwise entitled to from the fiduciary account.

(b) A savings bank that makes a purchase or sale described in subsection (a) shall disclose, at least annually, to each person entitled to receive statements of account activity from the savings bank any purchase or sale made by the savings bank during the year. The disclosure must be in writing or an electronic format and include the following:

- (1) Any capacity in which the savings bank or an affiliate of the savings bank acts for:
 - (A) the issuer of the securities; or
 - (B) the provider of the products or services;
 that is the subject of the purchase or sale.
- (2) A statement that the savings bank or an affiliate of the savings bank has an interest in the subject of the purchase or sale, if applicable.
- (3) The rate and method by which that compensation was determined.
- (4) The name, telephone number, street address, and mailing

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address of an officer of the savings bank who may be contacted for further information.

(5) A notice that the bank's or trust company's ability to make transactions described in subsection (a) ends upon receipt at any time of a notice of objection by a majority of the persons entitled to receive statements of account activity.

(c) To make a purchase or sale under subsection (a):

(1) if the fiduciary relationship is a revocable trust, the grantor must consent to the purchase or sale in writing;

(2) if the fiduciary relationship is an agency, the principal must consent to the purchase or sale in writing; or

(3) if the fiduciary relationship is an irrevocable trust (or if the trust grantor is deceased or reasonably believed by the trustee to be incapacitated), after providing at least forty-five (45) days advance notice to any person entitled to receive statements of account activity from the savings bank, the savings bank may make a purchase or sale described in subsection (a), except that, in the case of an irrevocable trust, a savings bank's authority to make the purchases or sales ends upon receipt at any time from a majority of the persons entitled to receive statements of account activity from the savings bank of written objection to the application of this section to the fiduciary account. An objection is considered to be effective on the date the objection is received at the mailing address listed in the disclosure required by subsection (b).

SECTION 3. IC 30-4-3-7, AS AMENDED BY P.L.238-2005, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 7. (a) Unless the terms of the trust provide otherwise **or the transaction is authorized under IC 28-1-12-8 or IC 28-6.1-6-26**, the trustee has a duty:

(1) not to loan funds to ~~himself~~ **the trustee** or an affiliate;

(2) not to purchase or participate in the purchase of trust property from the trust for the trustee's own or an affiliate's account;

(3) not to sell or participate in the sale of the trustee's own or an affiliate's property to the trust; or

(4) if a corporate trustee, not to purchase for or retain in the trust its own or a parent or subsidiary corporation's stock, bonds, or other capital securities. However, the trustee may retain such securities already held in trusts created prior to September 2, 1971.

(b) Unless the terms of the trust provide otherwise, a corporate trustee may invest in, purchase for, or retain in the trust its own or an

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1 affiliate's obligations, including savings accounts and certificates of
 2 deposit, without the investment, purchase, or retention constituting a
 3 conflict of interest under section 5 of this chapter.

4 (c) Unless the terms of the trust provide otherwise, a corporate
 5 trustee does not violate subsection (a) by investing in, purchasing for,
 6 or retaining in the trust its own or an affiliate's obligations, including
 7 savings accounts and certificates of deposit, if the payment of each
 8 obligation is fully insured by the Bank Insurance Fund or the Savings
 9 Association Insurance Fund of the Federal Deposit Insurance
 10 Corporation, the National Credit Union Share Insurance Fund, or any
 11 insurer approved by the department of financial institutions under
 12 IC 28-7-1-31.5.

13 (d) If the terms of the trust permit the trustee to deal with a
 14 beneficiary for the trustee's own account, the trustee has a duty to deal
 15 fairly with and to disclose to the beneficiary all material facts related
 16 to the transaction which the trustee knows or should know.

17 (e) Unless the terms of the trust provide otherwise, the trustee may
 18 sell, exchange, or participate in the sale or exchange of trust property
 19 from one (1) trust to ~~himself~~ **the trustee** as trustee of another trust,
 20 provided the sale or exchange is fair and reasonable with respect to the
 21 beneficiaries of both trusts and the trustee discloses to the beneficiaries
 22 of both trusts all material facts related to the sale or exchange which
 23 the trustee knows or should know.

24 (f) This section does not prohibit a trustee from enforcing or
 25 fulfilling any enforceable contract or agreement:

26 (1) executed during the settlor's lifetime; and

27 (2) between the settlor and the trustee in the trustee's individual
 28 capacity.

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